

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 341 of 1999

in

SPECIAL CIVIL APPLICATION No 1102 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

GULAMHAIDER ABDULGAFOOR SHAIKH

Versus

TRANSPORT COMMISSIONER

Appearance:

MR SHAILESH C PARIKH for Appellant
Mr. S.K. Patel, Ld. Govt. counsel for Respondent No.1, 2

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE S.D.DAVE

Date of decision: 06/07/1999

ORAL JUDGEMENT

Per: K.G. Balakrishnan, C J :-

The appellant challenges the judgment of the Ld. Single Judge in Spl. C.A. No. 341 of 1999. The appellant was running a Motor Driving School as per the licence issued by the department. Appellant's son Imtiaz was helping the appellant in his business. It is alleged that the appellant's son was instrumental in giving bribery to some of the officers in the Regional Transport Office at Palanpur and a case was booked by the Anti Corruption Bureau against one RTO Inspector. The appellant's son was also impleaded as second accused as he had attempted to bribe the official.

Thereafter the appellant herein received a communication from the RTO alleging that the Transport Commissioner had ordered to cancel his licence and the RTO, Palanpur was directed to give intimation about the same. The communication which he had received from the RTO dated 22-1-1999 at Annexure-H was challenged by the appellant before the Ld. Single Judge. Ld. Single Judge held that the original order was passed by the Transport Commissioner and as the same was not produced in Court the Spl.C.A. was dismissed. The appellant though contended that he had not received copy of the original order, said plea was not accepted by the Ld. Single Judge. Aggrieved by the same, present LPA is preferred.

We heard appellant's counsel and Ld. AGP for the respondents.

The appellant has not produced the original order allegedly passed by the Transport Commissioner. Ld. Govt. Pleader admits that the order allegedly passed by the Transport Commissioner was not given to the appellant. The licencing authority is the RTO. If the licence is to be cancelled, it is to be done by the RTO. Evidently he has not passed any order. He had acted pursuant to the direction given by the Transport Commissioner. The Transport Commissioner is an appellate authority. In this case the licence is cancelled by the RTO. Admittedly the appellant was not given any notice regarding cancellation and /or proposed cancellation of his licence. The order if at all passed by the Transport Commissioner, was without any authority.

There is no allegation against the appellant. The only allegation is that the appellant's son was implicated in a criminal case and the R T O had passed an order on 4-12-1998 and considered all these aspects, and directed that the appellant's son shall not enter the

office of the RTO. The matter should have been rested there. But the Transport Commissioner without any authority passed the order of cancelling the licence and the appellant herein could not conduct the motor driving school for a long time.

Having regard to the facts and circumstances of the case, we set aside the order passed by the Transport Commissioner and consequently the licence granted to the appellant will revive. This appeal is accordingly allowed. No order as to costs.

/vgn